

ACTIVE VOTERS BY LEGISLATIVE DISTRICT

LEGISLATIVE	PRECINCT	DEM	GRN	LIB	NLP	REP	RPA	OTHER	Total
2	PINE/STRAWBERRY	548	1	12		1137	1	228	1927
2	WHISPERING PINES	65		2		120		34	221
	TOTAL	613	1	14	0	1257	1	262	2148
4	CANYON DAY	393				16		51	460
4	CARRIZO	42				8		15	65
4	CENTRAL HEIGHTS	548		3		97		39	687
4	CHRISTMAS	106	5	1		38	1	14	165
4	CLAYPOOL #1	597		2		147		62	808
4	CLAYPOOL #2	740		4		271		87	1102
4	CLAYPOOL #3	335				75		35	445
4	EAST GLOBE	420		4		157		50	631
4	GISELA	209		4		161	1	58	433
4	GLOBE #1	413				148		68	629
4	GLOBE #11	570	1	3		195	3	65	837
4	GLOBE #2	423	1			96		38	558
4	GLOBE #3	206	1			60		24	291
4	GLOBE #4	427				143		46	616
4	GLOBE #5	185		2	1	50		20	258
4	GLOBE #6	604		6		233	1	61	905
4	GLOBE #7	461	2			96		46	605
4	GLOBE #8	502		1		74		43	620
4	MIAMI #1	378				51		23	452
4	MIAMI #3	323		2		56		30	411
4	MIAMI #5	443				66		41	550
4	PAYSON #1	411	1	11		579	3	157	1162
4	PAYSON #2	459	3	6		901	1	207	1577
4	PAYSON #3	536		5		937	2	188	1668
4	PAYSON #4	469		6		601	4	136	1216
4	PAYSON #5	452		6		864		162	1484
4	PAYSON #6	382		10		427	1	117	937
4	PAYSON #7	249		6		431	1	98	785
4	PAYSON #8	322		5		555		120	1002
4	ROOSEVELT	130				69	1	29	229
4	SAN CARLOS	1652		3		126		202	1983
4	SIERRA ANCHA	102		1		45		17	165
4	STAR VALLEY	360		5		517		111	993
4	TONTO BASIN	387		3		217		70	677
4	YOUNG	179		3		185	2	69	438
4	ZANE GREY	163		4		346		56	569
	TOTAL	14578	14	106	1	9038	21	2655	26413
7	HAYDEN	553		1		8		19	581
7	WINKELMAN	275				6		13	294
	TOTAL	828	0	1	0	14	0	32	875
	GRAND TOTAL	16019	15	121	1	10309	22	2949	29436

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Natural Resources Policy Studies

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August 1, 2000

What Governors Need to Know About E-SIGN

Summary

On June 30, 2000, President Clinton signed into law the Electronic Signatures in Global and National Commerce Act (E-SIGN). The act is designed to set a nationwide standard for the use of electronic signatures and electronic records in commercial transactions. E-SIGN preempts those state laws that give preference to specific electronic signature and electronic record technologies, either by requiring their use or giving them a greater effect in court. The act is aimed primarily toward private sector transactions dealing with real property, personal property, or services. State actions that do not affect interstate or foreign commerce are not covered under E-SIGN. In addition, the act allows states to establish their own rules for the use of electronic signatures and records in procurement activities.

States that have adopted the Uniform Electronic Transactions Act (UETA) without any changes should not be affected when E-SIGN comes into effect on October 1, 2000. Those states that have not adopted UETA, or have adopted it with changes, may have their electronic signature and records laws preempted by the federal act. A state law needs to pass three tests to avoid preemption:

- It must specify procedures or requirements for the use or acceptance of electronic signatures and records;
- The procedures or requirements must be consistent with the provisions of E-SIGN; and
- The procedures or requirements cannot require the use of a specific technology or give it greater legal effect.

Governors should take the following steps to prepare their states for E-SIGN.

- Analyze their state's current laws affecting electronic signatures and electronic records for consistency with E-SIGN to determine the potential for preemption;
- Take steps to ensure that state government has the ability to accommodate the use of electronic signatures and electronic records by the private sector; and
- Help businesses in the state prepare to use electronic signatures and electronic records effectively.

Background

People have traditionally relied on paper and handwritten signatures to enter into contracts, disclose information, and otherwise conduct business. However, with more and more business conducted

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through information systems such as the Internet, people have begun to use electronic methods to accomplish the same results as paper records and handwritten signatures.

Over the years, a body of law has been established that relies on the use of paper records and handwritten signatures. However, many of these laws include references to handwritten signatures and paper records that could exclude the use of their electronic counterparts. To address this problem, all fifty states have passed laws that authorize the use of electronic signatures and records, either for all transactions or for specific purposes.¹ Some of these laws allowed the use of any method agreed to by the parties to a transaction, while others set specific criteria that had to be met or encouraged the use of particular technologies.

States recognized that the lack of uniformity in these laws could be a problem for those doing business across state and national boundaries, so they turned to the National Conference of Commissioners on Uniform State Laws (NCCUSL) to develop a solution. NCCUSL has drafted many uniform laws adopted by the states, including the Uniform Commercial Code. On July 29, 1999 NCCUSL approved the Uniform Electronic Transactions Act (UETA) to submit to state legislatures for adoption. Nineteen states have adopted UETA since then, and nine more have introduced it for consideration in their state legislatures.

At the same time, Congress also was concerned about the use of electronic signatures at the federal level and a lack of uniformity in state electronic signature and electronic record law. E-SIGN was passed to establish a nationwide standard that would apply during the time it would takes states to enact UETA, and in those states that did not enact the uniform law. Although E-SIGN defers to UETA in most circumstances, the federal legislation raises a number of questions for all states, whether or not they have passed UETA.

What Transactions Does E-SIGN Cover?

E-SIGN regulates the use of electronic signatures and electronic records in interstate and foreign commerce. It states that "a signature, contract or other record relating to such a transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form." Contracts used in interstate and foreign commerce are similarly protected if an electronic signature or record is used in their formation.² Most of the act has an effective date of October 1, 2000, although for record retention requirements mandated by federal or state laws or regulation the effective date is March 1, 2001.

The act also includes a series of consumer protections in section 101(c) that describe specific procedures a company must follow if it wishes to use electronic communication to provide notices it is currently required to supply in writing under current law. E-SIGN requires a company to get affirmative consent that demonstrates the consumer's ability to access the information electronically. It also prohibits some types of notices, such as eviction notices or termination of health insurance benefits, from being provided electronically.³

In addition to the consumer notices discussed above, E-SIGN lists a number of specific exemptions from its requirements. These include:

- transactions governed by state laws on the creation and execution of wills, codicils, or testamentary trusts or adoption, divorce, or other matters of family law;
- court orders and notices, or other official court documents; and

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- transportation documents required to accompany hazardous or toxic materials.

E-SIGN also exempts contracts or records governed by articles 3–9 of the Uniform Commercial Code (UCC).⁴ These articles of the UCC address such issues as the checking and electronic funds transfer systems, paper-based negotiable instruments, and rules on letters of credit and investment securities. E-SIGN uses the same language as UETA to exempt these articles of the UCC. In the comments on UETA submitted to states with the bill, the drafting committee states that articles 3, 4, and 4A were exempted because they cover areas with significant impacts beyond the immediate parties to a transaction; the other articles of the UCC were excluded because they had recently been revised to include electronic contract considerations.

How Will E-SIGN Affect State Government Actions?

E-SIGN should not have a significant effect on state actions to provide electronic government services to its citizens, streamline the regulatory process, or increase the efficiency of state agency operations. Section 101 of the act limits its scope to “any transaction in or affecting interstate or foreign commerce.” Transaction is defined in section 106(13) as “relating to the conduct of business, consumer, or commercial affairs between two or more persons”, with that conduct including the “sale, lease, exchange, licensing, or other disposition of” real property, personal property, or services. Earlier drafts of E-SIGN did include governmental affairs in the definition of transaction, but this was removed in the final version. This indicates that Congress does not intend the act to apply to state actions that do not affect interstate or foreign commerce.

In the major area that states do participate in the market, procurement, the act also gives them wide latitude. Section 102, which describes how state laws are permitted to modify or supercede E-SIGN, specifically excludes state laws and regulations governing procurement. This means that states can establish whatever rules and procedures they deem necessary for the use or acceptance of electronic signatures and records when they are purchasing goods or services from the private sector. If the state decides to only enter into electronic contracts using a particular type of encryption for a signature, E-SIGN does not prevent them from doing so.

The primary effect of E-SIGN should be on private entities that wish to use electronic signatures and electronic records as they conduct business. States should only be affected in so far as their activities must accommodate the use of electronic signatures and electronic records in the private sector. Insurance regulation is a good example of this. Current state laws that require handwritten signatures and paper records for insurance policies will be preempted by E-SIGN. State insurance regulators need to be prepared to review electronic records as a regular part of their duties, so the state will have to ensure they have the necessary equipment and training.

Another area where states should be prepared to deal with electronic signatures and documents is in their use in court. Although specific court documents, such as briefs, are exempted from E-SIGN, electronic contracts admitted as evidence are not. Judges and attorneys will need to develop and evaluate arguments as to their admissibility and persuasiveness, the same as with any other piece of evidence.

Electronic signatures and records can be a challenge for courts because there is little precedent governing their use. Many determinations about the validity of paper documents are made based on precedent, but it will be some time before similar rules develop for their electronic counterparts. E-

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SIGN does not go into effect for electronic records until March 1, 2001, so courts have some time to prepare. States may want to work with organizations such as the National Association of Attorneys General to develop appropriate training materials for judges and state attorneys.

How Will E-SIGN Affect Current State Electronic Signature and Electronic Record Laws?

E-SIGN does not automatically preempt all state laws on electronic signatures and records. Section 102(2)(a) lays out three tests a law or regulation must pass to avoid preemption.

- It must "specify the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records."
- The alternative procedures or requirements must be consistent with titles I and II of E-SIGN.
- The alternative procedures or requirements cannot require the use of or give greater legal effect to a specific technology.

If a state has passed UETA without changing it from the version promulgated by NCCUSL, the state's enactment of UETA supercedes E-SIGN as it applies to state law. Although UETA allows states to make changes to its scope under section 3(b)(4), E-SIGN requires that those changes pass the same tests it requires for any other state law that modifies, limits, or supercedes the federal act. Most states that have enacted UETA have not changed it from the NCCUSL version; states such as California that have exempted areas of state law from UETA will need to examine these changes carefully to see if they meet the tests required by E-SIGN.

The state laws most likely to be preempted by E-SIGN are those that only recognize one technology as creating a valid electronic signature or record, or that give a greater legal effect to the use of that technology. For example, the Utah Digital Signature Act established a state-regulated public key infrastructure (PKI) electronic signature system that government and private sector entities could use. If the PKI technology was used and the necessary encryption keys were obtained from a state approved vendor, that electronic signature was given a presumption of validity in state court should a dispute arise. E-SIGN should disallow the presumption of validity included in the Utah law. Businesses could continue to voluntarily use the PKI system, since state law did not require them to use it.

The Clinton Administration is currently drafting guidance that will provide its interpretation of how E-SIGN will affect UETA and other state electronic signature and records laws. This guidance should be available in late August 2000.

Will States Still Be Able to Enact Laws or Regulations on Electronic Signatures and Records?

Yes, states can still enact new laws on these subjects after E-SIGN comes into effect. These laws will need to pass the same tests applicable to current laws. Additionally, any laws other than UETA will need to make reference to E-SIGN.⁵

The ability of state agencies to issue regulations, within the scope of their jurisdiction, that interpret E-SIGN is provided for in section 104(b) of the act. These regulations must meet the same test as applied to current laws under section 102(a)(2). The agency also must have a substantial justification for

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issuing the regulations, and the regulations cannot impose additional requirements than those in section 101 of E-SIGN. Agencies are prohibited from imposing a requirement that a record be "in tangible or printed form" without a compelling law enforcement justification.

Should States That have not Passed UETA Yet Do So?

States should seriously consider finishing the process of enacting UETA as a uniform state law. UETA was in development for two years, and was analyzed for its interactions with all aspects of current state law. It is more comprehensive than E-SIGN, covering a number of issues left out of the federal legislation. UETA defers to existing state law whenever possible, leading to a different approach than E-SIGN on some issues.

Patricia Brumfield Fry, chair of the UETA drafting committee, has drafted a paper that examines these issues in depth. Entitled "A Preliminary Analysis of Federal and State Electronic Commerce Laws", it is available online at <<http://www.jetaonline.com/docs/pfry700.html>>.

What Should States Do to Prepare for E-SIGN?

Analyze current state electronic signature and record laws for consistency with E-SIGN. This will help states determine which laws could potentially be preempted and what the effects of that preemption might be. In most cases there should not be a major effect on the technologies and procedures used by the private sector to conduct business, even if specific state laws are preempted. Nothing in E-SIGN prohibits the use of particular technologies or procedures in commercial transactions. In those states that require, or give greater legal effect to, the use of a specific technology, it will be important to ensure that the private sector understands that these requirements no longer apply.

Ensure that state government is able to accommodate the use of electronic signatures and records by the private sector. Because E-SIGN is national in scope, the use of electronic signatures and records may significantly increase in the near future. State agencies will have to accommodate their use in all areas where the agency's regulatory jurisdiction covers commercial transactions or affects interstate commerce. Regulators must be able to review electronic records when necessary, and may need special training and equipment to do so. Regulators may also have to make determinations about whether a firm's use of electronic signatures and records meets regulatory requirements under their jurisdiction. For example, state banking regulators often have authority over the safety and soundness of transactions, and would need to decide whether a particular electronic signature implementation meets agency standards. Courts will be receiving electronic records as evidence in civil and criminal trials, and must be able to make legal judgments based on that evidence. State agencies should evaluate how their regulatory activities could be impacted by the use of electronic signatures and records by the businesses under their jurisdiction and make plans to address those impacts.

Help business and citizens in the state prepare to use electronic signatures and records effectively. Citizens and businesses need to be able to process electronic transactions in order to succeed in the new economy. States could the following strategies to make this transition easier, creating a competitive edge for their economies in national and international commerce.